

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSTCO WHOLESALE CORPORATION,

Plaintiffs,

v.

ARROWOOD INDEMNITY COMPANY,

Defendant.

No. 2:17-cv-01212-RSL

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

Pursuant to Federal Rule of Civil Procedure 26(c) and Local Civil Rule 26(c)(2), Plaintiff Costco Wholesale Corporation ("Costco") and Defendant Arrowood Indemnity Company ("Arrowood"), by and through their respective counsel, hereby agree and stipulate to the entry of a Protective Order governing discovery with the following terms:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Local Civil Rule 5 and Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery.

1 The protection it affords from public disclosure and use extends only to the limited information
2 or items that are entitled to confidential treatment under the applicable legal principles, and it
3 does not presumptively entitle parties to file confidential information under seal.

4 Further, it is the intent of the parties that notwithstanding this Stipulated Protective Order,
5 the parties are required to comply with the terms of the Court's Minute Order dated September
6 22, 2017, and any subsequent Case Management Order(s) with respect to the protections for
7 confidential or privileged materials. The parties also agree that the Stipulated Protective Order
8 does not entitle either party to production of discovery designated as confidential pursuant to the
9 terms below and neither party has agreed to produce any such material except as otherwise
10 required by the federal rules.
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12 2. "CONFIDENTIAL" MATERIAL
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14 "Confidential" material shall include the following documents and tangible things
15 produced or otherwise exchanged: documents, correspondence, and all other materials relating
16 to claims resolved through any arbitration under the settlement in the underlying action giving
17 rise to this matter, including but not limited to filings, award decisions and award amounts
18 stemming from any arbitration decisions; invoices (including redacted invoices) related to the
19 same and to the underlying case; confidential settlement documents; documents relating to
20 retention of attorneys and experts; communications between Costco or its representatives and its
21 carriers; documents designated as confidential or sealed in the underlying action.
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23 3. SCOPE

24 The protections conferred by this agreement cover not only confidential material (as
25 defined above), but also (1) any information copied or extracted from confidential material; (2)
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1 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
2 conversations, or presentations by parties or their counsel that might reveal confidential material.

3 However, the protections conferred by this agreement do not cover information that is in
4 the public domain or becomes part of the public domain through trial or otherwise. Any use of
5 Protected Material at trial shall be governed by a separate agreement or order.

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7 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

8 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
9 or produced by another party or by a non-party in connection with this case only for prosecuting,
10 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
11 the categories of persons and under the conditions described in this agreement. Confidential
12 material must be stored and maintained by a receiving party at a location and in a secure manner
13 that ensures that access is limited to the persons authorized under this agreement.

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15 4.2 Disclosure of Confidential Information or Items. Unless otherwise ordered by the
16 Court or permitted in writing by the designating party, a receiving party may disclose any
17 confidential material only to:

18 (a) The receiving party's counsel of record in this action, as well as employees of
19 counsel to whom it is reasonably necessary to disclose the information for this litigation;

20 (b) The officers, directors, and employees (including in house counsel), of the
21 receiving party to whom disclosure is reasonably necessary for this litigation;

22 (c) Experts and consultants to whom disclosure is reasonably necessary for this
23 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 (d) The Court, court personnel, and court reporters and their staff;

25 (e) Reinsurers and retrocessionaires, and their employees;
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1 (f) Copy or imaging services retained by counsel to assist in the duplication of
2 confidential material, provided that counsel for the party retaining the copy or imaging service
3 instructs the service not to disclose any confidential material to third parties and to immediately
4 return all originals and copies of any confidential material;

5 (g) During their depositions, witnesses in the action to whom disclosure is
6 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
7 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
8 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
9 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
10 under this agreement;

11 (h) The author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information.

13 4.3 Filing Confidential Material. Before filing confidential material or discussing or
14 referencing such material in court filings, the filing party shall confer with the designating party
15 to determine whether the designating party will remove the confidential designation, whether the
16 document can be redacted, or whether a motion to seal or stipulation and proposed order is
17 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
18 standards that will be applied when a party seeks permission from the court to file material under
19 seal.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
22 or non-party that designates information or items for protection under this agreement must take
23 care to limit any such designation to specific material that qualifies under the appropriate
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standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, e.g., section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial or trial proceedings: the parties must identify on the record, during the deposition, hearing, or other proceeding, all

1 protected testimony, without prejudice to their right to so designate other testimony after
2 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
3 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

4 (c) Other tangible items: the producing party must affix in a prominent place on
5 the exterior of the container or containers in which the information or item is stored the word
6 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
7 the producing party, to the extent practicable, shall identify the protected portion(s).
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9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the designating party's
11 right to secure protection under this agreement for such material. Upon timely correction of a
12 designation, the receiving party must make reasonable efforts to ensure that the material is
13 treated in accordance with the provisions of this agreement.
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15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
19 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
20 challenge a confidentiality designation by electing not to mount a challenge promptly after the
21 original designation is disclosed.
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23 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
24 regarding confidential designations without court involvement. Any motion regarding
25 confidential designations or for a protective order must include a certification, in the motion or in
26 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
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1 conference with other affected parties in an effort to resolve the dispute without court action.
2 The certification must list the date, manner, and participants to the conference. A good faith
3 effort to confer requires a face-to-face meeting or a telephone conference.

4 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
5 intervention, the designating party may file and serve a motion to retain confidentiality under
6 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
7 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
8 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
9 other parties) may expose the challenging party to sanctions. All parties shall continue to
10 maintain the material in question as confidential until the Court rules on the challenge.

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12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
16 party must:

17 (a) Promptly notify the designating party in writing and include a copy of the
18 subpoena or court order;

19 (b) Promptly notify in writing the party who caused the subpoena or order to issue
20 in the other litigation that some or all of the material covered by the subpoena or order is subject
21 to this agreement. Such notification shall include a copy of this agreement; and

22 (c) Cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose confidential material may be affected.

24 The designating party shall bear the burden and expense of seeking protection in the court
25 that issued the subpoena or order of its confidential material, and nothing in these provisions
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1 should be construed as authorizing or encouraging a receiving party in this action to disobey a
2 lawful directive from another court.

3 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
5 material to any person or in any circumstance not authorized under this agreement, the receiving
6 party must immediately (a) notify in writing the designating party of the unauthorized
7 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
8 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
9 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
10 Agreement to Be Bound" that is attached hereto as Exhibit A.

11 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
12 MATERIAL

13 When a producing party gives notice to receiving parties that certain inadvertently
14 produced material is subject to a claim of privilege or other protection, the obligations of the
15 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
16 provision is not intended to modify whatever procedure may be established in an e-discovery
17 order or agreement that provides for production without prior privilege review. Parties shall
18 confer on an appropriate non-waiver order under Fed. R. Evid. 502(d) as set forth herein.
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20 10. NON TERMINATION AND RETURN OF DOCUMENTS

21 Within 60 days after the termination of this action, including all appeals, each receiving
22 party must return all confidential material to the producing party, including all copies, extracts
23 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
24 destruction.
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1 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
2 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
4 work product, even if such materials contain confidential material.

5 The confidentiality obligations imposed by this agreement shall remain in effect until a
6 designating party agrees otherwise in writing or a court orders otherwise.

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8 **11. RIGHT TO FURTHER RELIEF**

9 Nothing in this Order abridges the right of any Party to seek its modification by the Court
10 in the future. This Order and Agreement may be enforced by an Order of specific performance,
11 as well as any claim for damages.

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14 IT IS SO STIPULATED this ____ day of _____, 2018.

15
16 By /s/ Paul J. Lawrence

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 DATED: Jan. 11, 2018

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6 Honorable Robert S. Lasnik
United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address],

declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____ [date] in the case of Costco Wholesale Corporation v. Arrowood Indemnity Company, Case No. 2:17-cv-01212-RSL. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____